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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,919	09/15/2003	Kyle Young	14450US03	2724

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EXAMINER

MEREK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/662,919

Applicant(s)

YOUNG, KYLE

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Objections***

Claim 15 is objected to because of the following informalities: the language "removable engages said slits" is not consistent with the parent claim 10 which states the handle is removably connected to the housing. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Green (US 5,433,491). Regarding claim 1, see Figs. 1-5 where the structure is shown. The handle 51 is made of plastic. The thermoforming does not require any structure that is not in the reference. Regarding claim 2, see where the handle 51 is removable. Regarding claim 3, see Fig. 4 where the handle is connected to slots 35 and 36. Regarding claim 4, the tabs are on the ends of the handle. Regarding claim 5, the slots receive the tabs located at the ends of the handle. The term tab does not require any structure that is not in the reference. Regarding claim 7, the cap is 10 and is removable. Regarding claim 8, the cap has a tight friction fit with at least one end of the container. Regarding claim 9, see Figs. 3 and 4.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by LeMire (US 6,014,850). Regarding claim 1, 68 is the container portion and 66 is the plastic

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handle which is removable. The thermoforming does not require any structure that is not in the reference. Regarding claims 2 and 3, the handle is removably connected to opposing ends of the container portion. Regarding claim 4, the carrying member has a tab at both ends as seen in Fig. 1. The tabs are 26. Regarding claim 5, the slot is 36, which can removably receive the tab. The tab can be deflected in and out of the slot. Regarding claim 6, the slit is 70 as seen in Fig. 6.

Claims 10, 11, 13, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Root (US 1,515,277). Regarding claim 10 and 16, see Figs. 1-5 where the claimed structure is shown. The handle or string 10 can be removed from the housing 6. The removably connected does not require any structure that is not in the reference. Regarding claim 11, the container is open at each end. Regarding claim 13, the chamber is inside the housing and is adapted to receive plants. This does not require any structure that is not in the reference. Regarding claim 15, as it is best understood, the string or handle is capable of being removed from the slits 9. Regarding claim 17, the handle is elongated (i.e. it has a length or height which is greater than its width) and the handle has an upper end and a lower end.

### ***Claim Rejections - 35 USC § 103***

Claim 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes (US 5,261,554) in view of Freimark (US 5,409,151). Regarding claim 1-9, Forbes does not teach the strap being made of plastic. Freimark teaches using a woven or plastic strap. It would have obvious to employ the plastic strap of Freimark in the

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container of Forbes to provide an inexpensive and water proof material for the strap.

Regarding claims 2-9, see Figs. 1 and 2 of Forbes where the claimed structure is shown. The tab is 24 and the slot is in 13, which receives the tab 24. 20 is the carrying member. The removably connected does not require any structure that is not in the combination of references. The strap or handle can be removed and reattached to the container.

Claim 10-13, 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barclay (US 2,990,998) in view of DeMarco et al (US 5,133,290) and further in view of Zettler (US 32,128,723). Regarding claims 10 and 16, Barclay teaches a tubular housing with first and second caps where the first and second caps have a tight friction fit with first and second ends of the housing. Barclay does not teach the handle on the housing. DeMarco et al, as seen in Fig. 1 and Col. 2, lines 13-15, teaches a removable handle for a similar container. It would have been obvious to employ a removable handle as taught by DeMarco et al to make the container easier to pick-up and carry. The modified housing of Barclay does not teach the slots which engage the handle. Zettler teaches a handle for a container where the handle engages first and second slits. It would have been obvious to employ the handle and slits of Zettler in the housing of Barclay to provide a simple handle that can be attached to the housing without the use of fasteners, tools or adhesive. Moreover, it would have been obvious to employ the handle of Zettler since it is removable. Regarding claim 18, see the tabs 15 and 16 as seen in Fig. 1 of Zettler which are on the modified handle of Barclay. Regarding claim 19, the slots are 13 and 14 which are seen in Fig. 1 of Zettler. They

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are capable of receiving the tabs in a removable manner. Regarding claim 20, the indents are the tapered areas on the handle where each end of the handle transitions to the narrower portion 10 as seen in Fig. 1 of Zettler. These indents are proximate the tabs.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeMire (US 6,014,850). Regarding claim 21, LeMire teaches using plastic for the container portion and the handle. See Fig. 10, where the container portion has shrink wrap 110, i.e. a plastic outer layer. The process limitation of thermoforming does not require any structure that is not in the reference. Both the handle and the wrap are plastic, which satisfies the claim limitation. Regarding claim 22, it would have been obvious to one of ordinary skill in the art to select a material for a part of the container so that the part would be capable of performing its desired function. It would have been obvious to one of ordinary skill in the art to select different materials to perform different functions. The handle will inherently have a different function than the container wall.

### ***Conclusion***

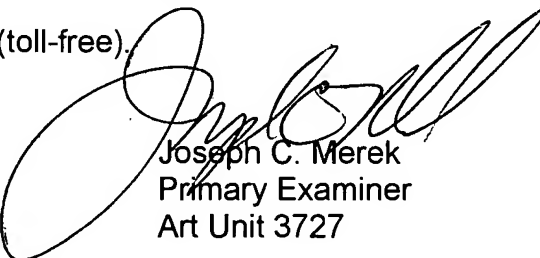
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McGowan (US 583,925) is cited for teaching a plant container. Nye (US 3,980,216) is cited for teaching radially extending slits for receiving a handle. Ring (US 3,263,806) is cited for teaching a tubular member with a strap and a removable cap friction fit on the container. Morris (US 1,502,051) is cited for teaching a string handle which has ends that are tied together.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Primary Examiner  
Art Unit 3727